

CHAPTER 1096

Stormwater Management

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1096.01 STORMWATER MANAGEMENT PROGRAM.

(a) Findings.

- (1) The health, safety, and welfare of Loudoun County residents requires the design, development, improvement, operation, maintenance, and oversight of a system of manmade and natural components of stormwater management infrastructure to both limit and manage the volume of stormwater to control flood events and to prevent degradation of the County's waterways and erosion of the County's lands.
- (2) Loudoun County is subject to Phase II of the Federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program for stormwater discharges, administered by the Virginia Department of Environmental Quality through a General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems in the Commonwealth of Virginia (9 VAC 25-750-10 et seq.). In order to comply with VPDES requirements, the County must develop a stormwater management program to reduce pollution from the stormwater drainage system to the maximum extent practicable.
- (3) Properly functioning stormwater management infrastructure provides benefit to all properties within the County by directly protecting properties through control of flooding and standing water, and by reducing the impact of stormwater flows on the County's natural environment.
- (4) The Loudoun County Board of Supervisors is authorized by state law to adopt a program for local stormwater management (Code of Virginia §10.1-603.1 et seq.).

(b) Establishment of Stormwater Management Program.

- (1) The stormwater management program of Loudoun County is hereby established. The program shall include the design, development, improvement, operation, inspection, maintenance, and oversight of the stormwater management system.
- (2) For the purposes of this chapter, stormwater management system (also referred to as stormwater infrastructure) is defined in Section 1096.01 (c).
- (3) The stormwater management system shall be designed, developed, improved, operated, maintained and overseen in accordance with all applicable federal, state, and local laws, statutes, ordinances, regulations and policies. Applicable local ordinances, regulations and policies include, but are not limited to, the County Zoning Ordinance, Land Subdivision and Development Ordinance, the Facilities Standards Manual, The Virginia

Erosion and Sediment Control Handbook, the drainage maintenance policies and programs of the County government, and all effective stormwater maintenance agreements.

- (4) Administrative Authority. The Director shall be responsible for the administration and enforcement of this ordinance.
- (5) Right of Entry. The Director may, with proper identification enter, at reasonable times, upon public or private property for the purposes of inspecting and investigating conditions relating to the enforcement of this chapter, but only after obtaining consent of the owner or occupant of the private property to be inspected, which owner or occupant has the authority, under law to authorize such entry and inspection.
- (6) Inspection Warrant
 - A. If such consent is not obtained, for any reason, including the inability to contact or locate the person with the authority to authorize such inspection, the Director shall obtain, from a County magistrate or judge, a warrant authorizing such entry, inspection or investigation upon such private property upon a showing of probable cause, supported by an affidavit, particularly describing the place, thing or person to be inspected or investigated, and the purpose for which the inspection or investigation is to be made. Probable cause shall be deemed to exist either if reasonable administrative standards for conducting such inspection or investigation are satisfied, with respect to the particular place, thing or person, or if there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such inspection or investigation. The supporting affidavit shall contain either a statement that consent to inspect or investigate has been sought and refused or not received or a description of the circumstances reasonably justifying the failure to seek such consent in order to effectively enforce this ordinance.
 - B. An inspection warrant shall be effective for the time specified therein, not to exceed ten days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon a showing that such extension or renewal is in the public interest. Such warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, shall be void. An inspection pursuant to such warrant may not be made in the absence of the owner, custodian or possessor of the particular place, thing or person unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of this ordinance. An inspection pursuant to this warrant shall not be made by means of forcible entry except that the judicial officer may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of a violation of any of the provisions of this ordinance which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. In the case of inspection of a dwelling, prior consent must be sought and refused unless the issuing judicial officer finds that failure to seek consent is justified and that there is a reasonable suspicion of an immediate threat to public health or safety.

C. Compliance with Inspection Warrants. No person shall willfully refuse to permit an inspection lawfully authorized by a warrant issued pursuant to this ordinance.

(c) Definitions.

As used in this chapter:

- (1) “Director” means the Director of the Department of General Services or his designee.
- (2) “Discharge” means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.
- (3) “Dulles Greenway” means the private toll road and rights-of-way comprising a 14-mile extension of the Dulles Toll Road, connecting Washington Dulles International Airport with Leesburg, Virginia.
- (4) “Facilities Standards Manual” means the Loudoun County Facilities Standards Manual, as amended.
- (5) “Illicit discharge” means any discharge to the stormwater management system that is not composed entirely of stormwater, except discharges pursuant to either a VPDES permit or discharges resulting from firefighting activities. This definition shall not include the discharges listed in Section 1096.03(a)(2) unless the County identifies such discharges as sources of pollutants to waters of the Commonwealth of Virginia.
- (6) “Industrial discharge” means discharges from any conveyance that is used for collecting and conveying stormwater and which are directly related to industrial uses as defined by the General Virginia Pollutant Discharge Elimination System Permit for Discharges of Storm Water Associated with Industrial Activity (9 VAC 25-151-10 et seq.).
- (7) “Person” means any individual, firm, corporation, partnership, association, organization or other entity, including governmental entities, or any combination thereof.
- (8) “Stormwater” means runoff from rain, snow or other forms of precipitation and surface runoff and drainage.
- (9) “Stormwater maintenance agreement” means an agreement between a private property owner and the County that establishes mutual responsibilities for maintenance of the stormwater management infrastructure where such infrastructure has uses in addition to stormwater management.
- (10) “Stormwater management system” means, for purposes of this chapter, the series of structural and non-structural stormwater infrastructure established to manage stormwater runoff and drainage. The stormwater management system includes, but is not limited to the following facilities and equipment, storm drains, storm sewers, catch-basins, drop inlets, pipes, open channels and ditches, dry detention facilities, wet detention facilities, and bio-retention facilities.

- (11) “Stormwater Pollution Prevention Plan” means a plan consisting of steps and activities designed to identify potential sources of stormwater pollution or contamination; and, establishing practices that will prevent or reduce pollutants in stormwater runoff.
- (12) “Virginia Erosion and Sediment Control Handbook” means the technical guide published by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation to meet the requirements of the Virginia Erosion and Sediment Law (Code of Virginia §10.1-560 et seq.).

1096.02 MAINTENANCE OF THE STORMWATER MANAGEMENT SYSTEM

It is the intent of this section to provide for the maintenance and repair of the County’s stormwater management system to its original design capability.

(a) Compliance with County Design Standards.

All new development and redevelopment, which includes stormwater infrastructure for water quality and quantity management, shall comply with the water quality and quantity standards of the latest edition of the Facilities Standards Manual.

(b) Maintenance of the Stormwater Management System.

- (1) Except as stated in this subparagraph, stormwater infrastructure heretofore or hereafter constructed within appropriately dedicated stormwater easements outside of Virginia Department of Transportation maintained rights-of-way, Dulles International Airport property and rights-of-way, Dulles Greenway property and rights-of-way, and the County's incorporated towns, shall be maintained by the County to its original design capability.
 - A. Notwithstanding, responsibility for maintenance, repair, and replacement of stormwater facilities and infrastructure heretofore or hereafter constructed and associated with wet ponds/lakes that have uses in addition to stormwater management, as determined by the Director, shall remain with the property owner unless, on a case-by-case basis, the County, at its sole discretion, assumes certain maintenance responsibilities detailed in a stormwater maintenance agreement between the property owner and the County.
 - B. Notwithstanding, responsibility for maintenance, repair, and replacement of stormwater facilities and infrastructure
 - (i) associated with manufactured filtration devices and systems or other structural or non-structural stormwater infrastructure not specifically listed in the definition of "Stormwater management system" in Section 1096.01(c)(10), and
 - (ii) constructed pursuant to construction plans, site plans, or preliminary subdivision plats depicting the proposed stormwater facilities and infrastructure and approved hereafter, shall remain with the property owner, and such owner responsibility shall be guaranteed by a Facilities Maintenance Performance Agreement executed by the property owner. To secure the performance of such Agreement, the property owner shall furnish to the governing body a financial

guarantee in the form of a cash escrow, corporate surety bond, or a bank or savings institution's irrevocable letter of credit, which complies with the criteria for acceptable forms of surety or security as specified in the Bonding Policy set forth in Chapter 8 of the Facilities Standards Manual, with surety satisfactory to the Director as to the surety, the amount and the form, in an amount sufficient for and conditioned upon the construction, repair and maintenance of such stormwater facilities and infrastructure in accordance with this Chapter 1096. On a case-by-case basis, the County, at its sole discretion, may assume certain maintenance responsibilities detailed in a stormwater maintenance agreement between the property owner and the County.

- C. Where the maintenance of the stormwater infrastructure in (A) and/or (B) above remains with the property owner, such infrastructure must be maintained to its original design capability, and the property owner shall provide a maintenance plan acceptable to the County and proof of compliance by submitting to the County an annual inspection report prepared by an engineer registered in the Commonwealth of Virginia detailing the condition of the infrastructure and certifying its ability to meet its original design capability or allow the County to inspect the stormwater infrastructure. If any deficiencies are reported in the engineering report, or are found in the course of a County inspection, the property owner shall be deemed to be in violation of this ordinance and shall be subject to the provisions of Section 1096.04 in addition to the obligations of the owner and the enforcement rights of the County provided in the Facilities Maintenance Performance Agreement and financial guarantee referenced in subparagraph B hereof.
 - D. Nothing herein shall relieve any property owner or developer from the obligations of valid proffers requiring the maintenance of storm drainage or stormwater management facilities except to the extent that the County assumes maintenance thereof pursuant to this ordinance.
- (2) Existing stormwater infrastructure constructed without a stormwater easement dedicated to Loudoun County must be maintained to its original design capability by the property owner. The property owner shall provide proof of compliance by submitting to the County an annual inspection report prepared by an engineer registered in the Commonwealth of Virginia detailing the condition of the infrastructure and certifying its ability to meet its original design capability or allow the County to inspect the stormwater infrastructure. If any deficiencies are detailed in the engineering report, or are found in the course of a County inspection, the property owner shall be deemed to be in violation of this ordinance, subject to the provisions of Section 1096.04.
 - (3) The County at its sole discretion may, following a request from the property owner, assume maintenance responsibility on a case-by-case basis for properties containing existing stormwater infrastructure constructed without a stormwater easement dedicated to Loudoun County, subject to the dedication of an easement for inspection and maintenance purposes acceptable to the County.

(c) Failure to Maintain Private Stormwater Management Facilities.

Any property owner whose property includes stormwater infrastructure for which the County has not assumed maintenance responsibilities that fails to submit evidence of proper maintenance of said facility as outlined above, or denies the County access to inspect said facility, shall be considered in violation of this ordinance, subject to the provisions of Section 1096.04.

1096.03 DISCHARGES TO THE STORMWATER MANAGEMENT SYSTEM

It is the intent of this section to prohibit the entry into public storm drainage facilities of any substance, whether solid or liquid, other than stormwater.

(a) Discharges to the Stormwater Management System.

(1) It shall be unlawful to:

- A. Cause or allow illicit discharges to the county's stormwater management system;
- B. Discharge materials other than stormwater to the stormwater management system by spills, dumping or disposal without a VPDES permit;
- C. Cause or allow industrial discharges into the stormwater management system without a VPDES permit; or
- D. Violate any condition or provision of this article or any permit granted for stormwater discharges.

(2) Subject to the provisions of Section 1096.03(a)(3) of this section, the following activities shall not be unlawful as illicit discharges under this article:

- A. Water line flushing;
- B. Landscape irrigation;
- C. Diverting stream flows or raising groundwater;
- D. Infiltration of uncontaminated groundwater;
- E. Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs or water from crawl spaces or footing drains;
- F. Flows from riparian habitats and wetlands;
- G. Air conditioning condensate;
- H. Lawn watering;
- I. Individual car washing on residential properties;
- J. Dechlorinated swimming pool discharges;
- K. Street washing; and
- L. Discharges or flows from fire fighting activities.

(3) If any of the activities listed in Section 1096.03(a)(2) of this section are found by the County to be sources of pollutants to waters of the Commonwealth of Virginia, the Director shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall constitute a violation of this ordinance.

(b) Inspections and Sampling.

- (1) The Director shall have authority to enter onto public and private property to carry out all inspection, surveillance and sampling procedures necessary to determine compliance and noncompliance with the conditions of the County's VPDES permit, and this Ordinance, including the prohibition of illicit discharges to the stormwater management system. The Director may sample stormwater outfalls or other components of the stormwater management system as may be appropriate in the administration and enforcement of this ordinance.
- (2) If an illicit discharge as defined herein is detected, it shall be a violation of this Ordinance and shall be subject to the provisions of Section 1096.04.
- (3) If deemed necessary to prevent future occurrences of illicit discharge, the Director shall have the authority to require a stormwater pollution prevention plan from any person whose discharges cause, or may cause, a violation of this article.

1096.04 VIOLATIONS

(a) Notice of Violations.

If the County determines that there is an illicit discharge, a failure to maintain a private stormwater management facility in conformance with this ordinance, or any other violation of this ordinance, notice shall be served upon the property owner of record by registered or certified mail to the address of the property owner of record. The notice shall specify the measures, as appropriate, needed to come into full compliance with the ordinance and shall specify the time within which such measures shall be completed. Failure to comply within the time specified shall be deemed to be a violation of this ordinance subject to the penalties outlined herein.

(b) Enforcement of Article; Penalty.

- (1) Criminal Penalty: Violation of the provisions of this article shall constitute a misdemeanor. Each day that a continuing violation of this article is maintained or permitted to remain shall constitute a separate offense. Violators shall be subject to a fine not exceeding \$1,000 or up to 30 days' imprisonment for each violation, or both.
- (2) Civil Penalty:
 - A. Any person who, intentionally or otherwise, commits any of the acts prohibited by Section 1096.03(a), fails to maintain a private stormwater management facility in conformance with this ordinance, or is otherwise in violation of this ordinance, shall be liable to the County for all costs of maintenance of such facility, and shall also be liable to the County for all costs of, testing, containment, cleanup, abatement, removal, and disposal of any substance unlawfully discharged into the stormwater management system.

- B. Without limiting the remedies that may be obtained under this section, the County may bring a civil action against any person for violation of this ordinance. The action may seek the imposition of a civil penalty of not more than \$2,000 against the person for each violation.
- C. The County may petition the Circuit Court to enjoin a violation or a threatened violation of this ordinance without the necessity of showing that an adequate remedy at law does not exist.
- D. In lieu of Section 1096.04(b)(2)B, above, with the consent of any person who has violated or failed, neglected or refused to obey the provisions of this ordinance, the County may provide, in an order issued by the Director against such person, for the payment of civil charges for violations, in specific sums, not to exceed the limit specified in Section 1096.04(b)(2)B, above. Such civil charges shall be in lieu of any appropriate civil penalty, which could be imposed under Section 1096.04(b)(2)B.
- E. Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action that one or more of the remedies set forth in this section has been sought or granted.